

February 3, 2017

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Neustar's Application for Review

Dear Secretary Dortch:

The North American Portability Management LLC ("NAPM LLC") respectfully submits its opposition to the Application for Review submitted by Neustar, Inc. (the "AFR")¹ of the letter sent to Neustar by the Wireline Competition Bureau and the Public Safety and Homeland Security Bureau (collectively, the "Bureaus") on January 6, 2017 (the "Letter").² Since the Bureaus sent the Letter, Neustar provided the NAPM LLC with an acceptable non-disclosure agreement ("NDA"), which has now been executed by Neustar, the NAPM LLC, the Transition Oversight Manager ("TOM"), and Telcordia Technologies, Inc. d/b/a/ iconectiv ("iconectiv").

Despite the successful mutual resolution of the disagreement over the NDA, the AFR remains pending. The Commission should promptly deny the AFR as it inaccurately characterizes (a) the events that led to the Letter, (b) the content of the Letter itself, and (c) Neustar's obligations under the Master Services Agreements with the NAPM LLC and the Commission's previous orders.

The NAPM LLC agrees with Neustar that the Master Services Agreements between Neustar and the NAPM LLC (the "MSAs") are private contracts.³ The MSAs also, however, explicitly recognize the oversight authority of the Federal Communications Commission ("Commission" or "FCC"), and require Neustar to provide services in accordance with the FCC's orders. For example, the MSAs explicitly

¹ Application for Review of Neustar, Inc., CC Docket No. 95-116, WC Docket Nos. 07-149 and 09-109 (filed January 19, 2017) (the "AFR").

² Letter from Matthew S. DelNero, Chief, FCC Wireline Competition Bureau, and David G. Simpson, Chief, FCC Public Safety & Homeland Security Bureau, to Lisa A. Hook, President & Chief Executive Officer, Neustar, Inc., at 2 (Jan. 6, 2017) ("Letter").

³ See, e.g., AFR at 2.

require Neustar to comply, at its expense, with all applicable federal law in its performance of its obligations under the MSAs.⁴ By way of further example, Neustar explicitly:

- warranted that it would perform all services in accordance with all requirements and restrictions lawfully imposed by the FCC,⁵ and
- recognized that the NAPM LLC, the NPAC/SMS and users of the NPAC/SMS are or may be subject to certain "federal and state statutes and rules and regulations promulgated thereunder, as well as rules, regulations, orders, opinions, decisions and possible approval of the FCC, NANC and other regulatory bodies having jurisdiction or delegated authority over" the NAPM LLC, the NPAC/SMS and users of the NPAC/SMS.⁶

In short, the private contracts between the NAPM LLC and Neustar -- the MSAs -- explicitly require Neustar to perform its duties in accordance with the requirements of the FCC's orders, even if the MSAs need to be changed or modified.⁷ Accordingly, Neustar is obligated both by the MSAs and the FCC's orders to facilitate transition subject to the oversight of the FCC,⁸ and the Bureaus' exercise of their delegated oversight authority to facilitate the transition is consistent with, and contemplated by, the MSAs.

From time-to-time during the transition, Neustar has suggested that its obligations are determined solely by the MSAs, not by the FCC's orders. Although Neustar's appeal of the FCC's selection order is still pending, none of the FCC's transition-related orders have been stayed or vacated, and thus they remain fully valid and binding. Moreover, the obligations that the FCC imposed upon Neustar, the NAPM LLC and iconectiv would be valid and binding even in the absence of the MSAs. Because the MSAs also explicitly require Neustar to comply with valid FCC orders, there can be no question but that the MSAs and the FCC's orders together create the framework for the parties' actions relating to this transition.

Neustar characterizes the Letter as "compelling" Neustar to enter into a specific NDA in a manner contrary to the MSAs' arbitration clause.⁹ This is incorrect. The Letter did not compel Neustar to do anything other than to explain itself to the Bureaus if Neustar remained unwilling to enter into either (1) the draft NDA that the NAPM LLC had proposed or (2) another NDA that reflected the language and structure of the confidentiality provisions in the MSAs. Later events underscore this fact: Neustar subsequently proposed an NDA to the NAPM LLC, which the NAPM LLC, the TOM, and iconectiv all promptly executed. This is a far cry from nullifying an arbitration provision or ordering Neustar to "accept the NAPM's preferred terms, regardless of their merits or the technical, security, or cost considerations

⁴ See § 8.10 of the AGREEMENT FOR NUMBER PORTABILITY ADMINISTRATION CENTER/SERVICE MANAGEMENT SYSTEM BETWEEN LOCKHEED MARTIN IMS AND NORTHEAST CARRIER ACQUISITION COMPANY, L.L.C., effective November 7, 1997 (the "NE MSA"). The MSAs also require Neustar to indemnify the NAPM LLC for all liabilities, damages, losses or expenses (including attorney's fees) arising from Neustar's failure to comply with federal law, which includes the FCC's transition-related orders. See *id.*

⁵ See *id.*, § 21.3.

⁶ See *id.*, § 25.1.

⁷ See *id.*

⁸ See, e.g., *id.*, § 24 (Transition Services).

⁹ See, e.g., AFR at 1-5, 8.

implicated by them."¹⁰ Neustar's interpretation of the MSAs would undermine the Commission's statutory authority as delegated to the Bureaus.¹¹

And the Bureaus' action was hardly draconian: they merely expressed an opinion and requested an explanation about a prolonged negotiation that risked adversely affecting a program squarely within the Commission's authority. The Bureaus did not order Neustar to enter into any specific NDA or prevent Neustar from exercising its arbitration rights under the MSAs. The NAPM LLC welcomed Neustar's decision to propose an acceptable NDA after learning the opinion of the Bureaus about the proposed NDAs, but Neustar faced no legal compulsion to take any step other than to explain its actions to the Bureaus. Neustar was free to file an arbitration petition -- or propose an entirely different NDA -- and explain its actions to the Bureaus without violating the Letter. Since the Letter did not prohibit Neustar from exercising its arbitration rights pursuant to the MSAs, the Letter did not abrogate the arbitration clause of the MSAs, and the case law about the Federal Arbitration Act ("FAA") that Neustar cites is inapposite.

Even if there had been an arbitration pursuant to the MSAs, any party could have appealed the decision of the arbitrator to the FCC, which is not subject to the United States Arbitration Act, 9 U.S.C. 1-16 *et seq.* ("USAA").¹² In light of the FCC's role in overseeing the NPAC/SMS and the transition (including the FCC's ultimate authority to resolve disputes) in accordance with the explicit terms of the MSAs, and the agency's ultimate authority to resolve disputes under the MSAs, oversight by the FCC does not constitute improper or unlawful intervention into a private contract.

Finally, the claim that the "NAPM contravened the FAA by apparently seeking relief from the Bureaus instead of arbitrating its dispute with Neustar" is baseless.¹³ In overseeing the transition, the Bureaus communicate frequently with all parties, including Neustar and the NAPM LLC. Neustar's

¹⁰ AFR at 5.

¹¹ See, e.g., 47 U.S.C. 251(e); *In the Matter of Implementation of Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration; Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration, and to End the NAPM LLC's Interim Role in Number Portability Administration Contract Management; Telephone Number Portability*, WC Docket Nos. 09-109, 07-149, CC Docket 95-116, Order, 30 FCC Rcd 3082, ¶159 (2015) (LNPA Selection Order) ("Furthermore, the Commission expects Telcordia and Neustar to carry out their respective transition responsibilities in good faith and in a reasonable and cooperative manner. Each company's record in successfully transitioning from and to the LNPA may be considered by the government in past performance evaluations under future procurements, e.g., the Commission's numbering contracts. **This includes, but is not limited to, adherence to schedules, reasonable and cooperative behavior and commitment to customer satisfaction, integrity and business ethics, and business-like concern for the interests of the customer.**") (footnotes omitted and emphasis added); *id.*, n.559 (directing the NAPM LLC "to consider what remedies, including, if appropriate, financial penalties, should attach if the incumbent should fail to meet its obligations to ensure the protection of these interests."); *In the Matter of Implementation of Telcordia Technologies, Inc. Petition of Telcordia Technologies, Inc. to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, Order, 31 FCC Rcd. 8406, n.121 (2016) ("Approval Order") (providing that "the NAPM, Telcordia and the TOM will work with all stakeholders, including Neustar (which is obligated under its existing contract with the NAPM to cooperate with any transition process to a new LNPA) to ensure a successful LNPA transition process.").

¹² See NE MSA, § 26.2.

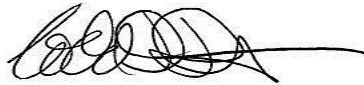
¹³ See AFR at 9.

unwillingness to sign various different versions of NDAs that were all acceptable to the NAPM LLC, the TOM and iconectiv, was one of many issues necessarily discussed by the NAPM LLC with the Bureaus in relation to the Bureaus' oversight of the transition and the MSAs. Indeed, Neustar itself frequently discussed the NDA issue with the Bureaus,¹⁴ and all but concedes that it had sought the agency's blessing for its preferred draft.¹⁵ Of course, Neustar's "close coordination with the Commission staff" and its efforts to secure the blessing of the Bureaus for its positions did not violate the FAA or constitute an effort to "seek[] relief from the Bureaus instead of arbitrating" under the MSAs any more than the NAPM LLC's discussions with the FCC did.¹⁶

In sum, the Commission should promptly deny Neustar's AFR because the Letter represents appropriate guidance, well within the scope of the Commission's statutory authority and the oversight authority delegated to the Bureaus, that facilitates the transition consistent with applicable law and the terms of the MSAs. The public interest is served by a successful transition, and the Bureaus have been diligent in their oversight and judicious in their communications regarding the relevant issues.

Please contact the undersigned if you have any questions or would like any additional information about the issues discussed herein.

Respectfully submitted,



Todd D. Daubert
Counsel to the NAPM LLC

¹⁴ As Neustar itself has explained, the "Letter contains a description of Neustar's role in the negotiations that was disappointing **given Neustar's close coordination with the Commission staff during the negotiations of the NDA.**" Letter from Marc S. Martin, Counsel for Neustar, Inc., to Matthew S. DelNero, Chief, FCC Wireline Competition Bureau, and David G. Simpson, Chief, FCC Public Safety & Homeland Security Bureau (Jan. 17, 2017) (emphasis added). The NAPM LLC notes for the record that the Letter is factually accurately.

¹⁵ See, e.g., *id.* at 1-2 ("The Letter opines that the November 22, 2016 draft of the NDA sent to Neustar by the NAPM, 'presents a workable solution' and sets forth 'a reasonable agreement.' What this premise omits is that the November 22 draft reflected the NAPM's rejection of the **[Neustar] draft the FCC staff reviewed and was sufficiently satisfied with its content to deliver to the NAPM.**") (emphasis added).

¹⁶ Neustar's claim that the NAPM LLC refused to meet with Neustar to negotiate the NDA on six separate occasions is false. See AFR at 10. In reality, the NAPM LLC did not refuse even once to meet with Neustar. Rather, the NAPM LLC requested that Neustar first provide (1) a detailed explanation of the reasons why Neustar repeatedly rejected the drafts proposed by the NAPM LLC and (2) an agenda for the meeting. The intent of these requests, each of which were made in writing, was to ensure that the meetings would be efficient because Neustar had consistently refused to provide a substantive explanation for its positions, even after the NAPM LLC had provided exhaustive and detailed explanations for its positions. Neustar never explicitly rejected the NAPM LLC's request for a detailed explanation and an agenda, but Neustar never provided them. This was the sole reason a meeting did not occur, and Neustar's mischaracterization of the NAPM LLC's request as a refusal is disingenuous.